

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

James Lee Stewart,

NO. C 07-04061 JW

Plaintiff,

**ORDER CONTINUING HEARING ON
ORDER TO SHOW CAUSE RE:
DISMISSAL**

v.

Leland Stanford Junior University,

Defendant.

Plaintiff filed this action on August 8, 2007. (Docket Item No. 1.) The action was originally set for a Case Management Conference on November 21, 2007 before Magistrate Judge Richard Seeborg. Judge Seeborg continued the Case Management Conference to January 23, 2008 because Plaintiff had not served Defendant. (Docket Item No. 3.) The case was then reassigned, and the Case Management Conference was continued to February 11, 2008. (Docket Item No. 4.) The new deadline for filing a Joint Statement was February 1, 2008. To date, the record indicates that Plaintiff still has not served Defendant. Service pursuant to Rule 4(m) of Fed. R. Civ. P. expired on December 6, 2007.

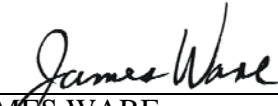
On February 7, 2007, the Court issued an Order to Show Cause Re: Dismissal for lack of prosecution and set a hearing for February 25, 2008. On February 15, 2007, Plaintiff's counsel filed a "Certificate of Steven D. Zavodnick Pursuant to Order to Show Case Re: Dismissal." (Docket Item No. 7.) Counsel represents that he 1) never received the Court's notice regarding the February 11, 2008 Case Management Conference and 2) personally served Emery Teranishi of Leland Stanford University on November 16, 2007. While counsel does not fully explain why he did not

1 receive Docket Item No. 4 but received all other Court orders and documents, the Court finds good
2 cause to continue the hearing on the Order to Show Cause at this time.

3 Plaintiff has also filed a Request for Entry of Default. (Docket No. 8.) While the Clerk of
4 Court will examine Plaintiff's request, the Court notes that Plaintiff has failed to file proof of his
5 service of the Summons and Complaint to a person authorized to accept service of process for
6 Defendant.

7 The Court continues the Order to Show Cause Re: Dismissal to **March 17, 2008 at 9 A.M.**
8 to give Plaintiff sufficient time to file the necessary proof of service with the Clerk's office.
9 Failure to comply with any part of this Order will be deemed sufficient grounds to dismiss this
10 action.

11
12 Dated: February 20, 2008



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Steven Daniel Zavodnick, szavodnick@verizon.net

3 **Dated: February 20, 2008**

Richard W. Wieking, Clerk

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5 **By: /s/ JW Chambers**
6 **Elizabeth Garcia**
7 **Courtroom Deputy**
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